

Changes of Law in Aggravated Circumstance Hearings

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In cases where the parent has subjected a juvenile to “aggravated circumstances,” prosecutors can request the court to make a finding that will excuse the State from its duty to make reasonable efforts to preserve and unify the family. The phrase “aggravated circumstances” has been judicially interpreted to mean that the nature of the abuse or neglect is so severe or repetitive that reunification with the child’s parents jeopardizes and compromises the child’s safety and well-being. [See *In re Interest of Jac’Quez N.*, 266 Neb. 782, 669 N.W.2d 429 (2003)]

It is estimated that about 20-30 percent of the cases involve the types of parental behaviors that could provide a basis for the court to find an exception to the State’s duty to exercise reasonable efforts. Some examples include cases involving abandonment, torture, sexual abuse, or chronic abuse. There are other grounds in addition to “aggravated circumstances” upon which the court may find that an exception exists with respect to the State’s duty to make reasonable efforts: 1) parental involvement in the murder or voluntary manslaughter of another child of the parent, 2) situations where the parental rights to a sibling of the juvenile have been terminated involuntarily, 3) the commission of a felony assault which results in the serious bodily injury to either the juvenile or to another minor child of the parent, and 4) if the parent has been convicted of felony sexual assault of the other parent of the juvenile. [See Neb. Rev. Stat. §43-283.01(4)(b) and (4)(c)]

If the court has ruled that efforts to reunify are no longer necessary, then children can be transitioned more quickly into permanency, whether in the form of adoption or guardianship. [See Neb. Rev. Stat. §43-283.01(5)]

Prosecutors and guardians ad litem should review their cases in order to identify the existence of factual grounds upon which the court can make a determination that reasonable efforts to preserve and reunify the family are *not* required. Where such grounds exist, prosecutors and guardians ad litem can request the court to make such a finding.

For example, such a determination can be requested from the court in the initial petition filed by the State, or in a motion subsequently filed by either the State, or the juvenile’s guardian ad litem. The element of “aggravated circumstances” also constitutes a separate statutory ground upon which termination of parental rights can be sought immediately. Neb. Rev. Stat. §43-292(9) authorizes the court to terminate parental rights when the parent of the juvenile has subjected the juvenile to “aggravated circumstances,” including, but not limited to, abandonment, torture, sexual abuse, or chronic abuse. Note that the “aggravated circumstances” under Neb. Rev. Stat. §43-283.01 and the “aggravated circumstances” under Neb. Rev. Stat. §43-292(9) are in substance the same: subjection of either the juvenile *or another child of the parent* to “aggravated circumstances” will suffice to relieve the State from its duty to make reasonable efforts under Neb. Rev. Stat.

§43-283.01. and will also provide a basis for termination of parental rights under Sec. 43-292(9). Thus, a parent's conduct demonstrated toward another child ***–not just his or her own child*** – is now part of the calculation regarding reasonable efforts and the termination of parental rights based upon aggravated circumstances which to terminate parental rights under §43-292(9).

The following allegations could be used to support a judicial finding that reasonable efforts are not required in a given case: “The father has been convicted of felony child abuse due to the abuse he inflicted upon his daughter. A certified copy of the judgment of his conviction is marked as Exhibit “A” and attached hereto. As the result of said child abuse by her father, the minor child sustained numerous bruises and fractures. The mother delayed unreasonably in seeking proper medical care and treatment for her daughter, as the result of which the daughter’s injuries were exacerbated.

Reasonable efforts to preserve and reunify the family are not required in this case due to the fact that both parents have subjected the minor child to aggravated circumstances within the meaning of Neb. Rev. Stat. §43-283.01(4)(a); and that the father committed a felony assault which resulted in serious bodily injury to the minor child, under Neb. Rev. Stat. §43-283.01(4)(b). Wherefore, the undersigned requests this court to make a finding that reasonable efforts to preserve and reunify the family are not required, and to hold a permanency hearing within thirty days, as required by Neb. Rev. Stat. §43-283.01(5).”